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OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: November 30, 2005
Case Number: TSO-0323

This Decision concerns the continued eligibility of XXXXX XXX (hereinafter referred to as "the individual") to hold an access authorization (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should be restored.

I. Background

The individual is employed by a Department of Energy (DOE) contractor and held a security clearance at the request of the contractor. During a re-investigation, the individual informed DOE of a history of treatment by mental health professionals. In order to resolve the security concern arising from the individual's mental health issues, DOE conducted a Personnel Security Interview (PSI) with the individual in March 2005. The PSI did not resolve the concern, and in June 2005, a DOE consultant-psychiatrist evaluated the individual. The psychiatrist diagnosed the individual as suffering from bipolar disorder, an illness that causes or may cause a significant defect in his judgment or reliability.

In October 2005, DOE informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his continued eligibility for access authorization. Notification Letter (October 20, 2005). The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8 (h) (Criterion H). DOE invoked Criterion H based on information in its possession, specifically the diagnosis of the DOE consultant-psychiatrist, that the individual has an illness or mental condition that causes or may cause a significant defect in his judgment or reliability. Notification Letter at 4; 10 C.F.R. § 710.8 (h).

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE consultant-psychiatrist (DOE psychiatrist) testified on behalf of the agency. The individual testified on his own behalf and also elected to call a forensic psychiatrist as a witness. The transcript

taken at the hearing shall be hereinafter cited as “Tr.” Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as “Ex.” Exhibits tendered by the individual shall be cited as “Ind. Ex.”

II. Analysis

The applicable regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual’s future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for the granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual’s access authorization should be restored at this time because I cannot conclude that such a restoration would endanger the common defense and security and would not be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

In 1967, the individual was hospitalized briefly for a “nervous condition” the summer after he graduated from high school. Ex. 16 at 3. In 1979, the individual received a security clearance at the request of his employer. Ex. 9. One day in December 1981, the individual began to act erratically at his office. He discussed the Bible with colleagues in an inappropriate manner and acted very excited and full of energy. Ex. 16. His erratic behavior continued at home, and the individual’s family had him hospitalized that day. He remained in the hospital for two weeks and was diagnosed as suffering from a Manic Depressive illness and then prescribed lithium carbonate. *Id.* at 2; Tr. at 83. In July 1982, he again experienced hyperactivity and trouble sleeping, but his symptoms decreased when his doctor prescribed an increase in his lithium dosage. *Id.* In August 1983, he had

another hyperactive episode, where he was unable to relax and spent great amounts of time in religious activities. In response, his psychiatrist increased the individual's dosage of lithium and changed the individual's drug regimen. *Id.* The individual missed a few days at work. *Id.* He was evaluated by a DOE psychiatrist later that month, and the psychiatrist concluded that the individual suffered from a manic depressive illness and had experienced at least three episodes of mania. Ex. 9. The psychiatrist recommended a more regular and structured monitoring program in order to control the individual's condition, but also opined that the individual had no defect in his judgment or reliability. Ex. 16 at 5. In March 1984, DOE continued the individual's clearance based on that opinion. Ex. 9.

During a routine re-investigation, the individual completed a QNSP in May 1990 and fully disclosed his psychiatric treatment. Ex. 21. DOE reviewed his file and determined that the individual was not a security risk because he continued to take his medication as prescribed, and also because his co-workers did not report any problems with the individual in the workplace. Ex. 8. In April 1995, he completed another QNSP for a re-investigation, and again fully disclosed his medical history and mental health treatment. Ex. 20. As a result of the potentially derogatory information regarding his mental health, DOE conducted a PSI in October 1995 to resolve the mental health issue. Ex. 25. DOE reviewed the individual's medical records again and verified his condition and treatment program, including the monitoring of his medication. Ex. 5. DOE concluded that the condition was "under good control and subject doing well" and, in January 1996, recommended continuing his clearance with no further action. Ex. 5, 6. However, later that year the individual resigned and moved to another state for a new job. His clearance was then terminated without cause.

In October 2002, the individual and his son had an argument about the son's sexuality while the son was visiting his parents during a college break. The individual became upset and his son, concerned about his father's behavior, called the police to calm his father down. Ex. 24 at 12; Tr. at 87. The police talked to both men and then left without taking any further action. Tr. at 87.

The individual completed a QNSP in May 2004 in anticipation of being re-hired by his current employer. He again fully disclosed his mental health treatment in the QNSP. Ex. 19. In June 2004, the individual was re-hired by his current employer, who requested access authorization for the individual. Ex. 17; Ex. 24 (PSI 2005) at 22. His clearance was re-instated pending a reinvestigation. Ex. 17. DOE again conducted a PSI in order to resolve concerns about his mental health, but the concerns remained. In June 2005, a DOE psychiatrist interviewed the individual for approximately two hours and completed a report of the interview for the record. Ex. 10 (Report). In his evaluation report, the psychiatrist concluded that the individual met the criteria for Bipolar I Disorder, Most Recent Episode Manic, and currently under partial control on lithium and carbamazepine. *Id.* at 22. According to the DOE psychiatrist, the individual continued to have several episodes a year, even while on medication. The DOE psychiatrist concluded that there is no possibility of adequate rehabilitation or reformation "since Bipolar Disorder is a lifelong trait that can reoccur even after 20 or more years of quiescence." Report at 23.

B. Security Concerns

The manic bipolar episodes experienced by the individual in 1981 and 2002 pose a significant security concern to DOE. According to the DOE psychiatrist, symptoms have recurred several times a year. In several part 710 decisions, Hearing Officers have found that the risk of future, untreated Type I Bipolar episodes such as those experienced by the individual in this case, pose too great a security risk to grant or restore an access authorization.¹ Therefore, DOE's security concerns are valid and the agency has properly invoked Criterion H in this case.

1. The DOE Psychiatrist

The DOE psychiatrist testified that he diagnosed the individual with Bipolar I Disorder (BPD). Tr. at 10, 31. According to the psychiatrist, this illness caused the individual to be hospitalized twice and to have two incidents of erratic behavior that required police intervention. The psychiatrist testified that the episodes were probably manic. *Id.* at 11. He considers BPD to be the most potentially problematic illness from a personnel security point of view because in his opinion there is no rehabilitation and reformation possible. *Id.* at 14-15. The psychiatrist testified that during his interview, the individual said that he would experience feeling more talkative and energetic several times during the year. The psychiatrist considered these "muted episodes" --muted because the individual was taking medication, but still further evidence of the security concerns of his mental state. *Id.* at 24-25, 48. The DOE psychiatrist concluded that the individual suffered a recurrence of episodes every 18 months, making the security risk unacceptable. *Id.* at 21-25.

At the end of the hearing and after listening to all of the testimony, the DOE psychiatrist stated that his opinion had not changed. *Id.* at 76.

2. The Individual's Psychiatrist

As evidence of rehabilitation and reformation, the individual presented the testimony of a forensic psychiatrist who evaluated him three months prior to the hearing. This psychiatrist has been in private practice for 33 years. The psychiatrist reviewed the contents of the individual's file prior to his evaluation and completed a written report of the evaluation. Tr. at 9-10; Ind. Ex. 19. He described the individuals' relapses as "highs" approaching mania that occur predominately at home or around friends. Tr. at 64. He concluded that the individual can often control mild highs and if any of those highs occurred at work, the record confirms that the individual has been able to control them. *Id.* at 65. He opined that the individual controls his episodes by increasing his medication, getting feedback from his family on his behavior, and by reading about his condition.

¹ See *Personnel Security Hearing*, Case No. TSO-0031, 28 DOE ¶ 82,950 (2003) (possibility of relapse was 10-50%); *Personnel Security Hearing*, OHA Case No. VSO-0421, 28 DOE ¶ 82,800 (2001) (possibility of relapse was 25-40%); *Personnel Security Hearing*, OHA Case No. VSO-0381, 28 DOE ¶ 82,771 (2000) (possibility of relapse was 25%);

The psychiatrist also argued that the individual's exemplary work record is a very significant indicator of the individual's progress. Tr. at 67-68. According to the psychiatrist, the greatest predictor of how the individual will continue to function in the workplace is his past work performance. *Id.* at 68. He testified that the individual faces a well controlled and low probability of relapse based on the absence of repeated hospitalizations, relatively good control over the episodes that do occur, and good work performance. He concluded that the individual poses a "small to miniscule" risk to security. *Id.* at 69. The psychiatrist conceded that it is possible that the individual will experience mood fluctuations, but the fluctuations are "attenuated, relatively mild, and rapidly controlled." *Id.* at 70. The psychiatrist also opined that the individual's current treatment program is sufficient. *Id.* at 72.

3. The Individual

At the hearing, the individual described his current medical treatment program, which consists of medication management and counseling. Tr. at 81. He takes lithium and two other drugs daily and adjusts the dosages of the drugs if he has a problem with sleeping or mood swing. However, he has not taken an increased dosage in over two years. He estimates that in the past 25 years, he has taken an increased dosage about ten times, only when he feels "antsy." *Id.* at 82. The 1981 incident was the only episode that occurred in the workplace. *Id.* at 83. The individual testified that he gets good insight into his illness from reading books about bipolar disorder, and described a particular book that stresses the importance of medication and self-awareness to his treatment. *Id.* at 85. He sees a psychiatrist and a licensed counselor regularly. *Id.* He described the incident with his son in 2002 as a conversation about religion and certain sexual behaviors. He admitted that his son became upset during the conversation "for some reason" and then called the police. *Id.* at 87. However, he claims to have a good relationship with his son now. *Id.* at 88. The individual explained that his wife did not attend the hearing or testify due to poor health, as she was recently hospitalized twice for a serious illness. *Id.* at 90.² He also related the value of his wife's feedback. His wife of 27 years does not hesitate to point out any hyperactivity or religious euphoria, and that triggers him to change his behavior and medication. *Id.* at 86. He believes that this occurs about once a year. *Id.* at 91.

D. Evidence of Rehabilitation and Reformation

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, two psychiatrists testified at the hearing. They both agree that the individual has bipolar disorder and that bipolar disorder raises a security concern due to its effect on the judgment and reliability of the individual. However, the psychiatrists disagree on whether the individual has shown adequate evidence of rehabilitation or reformation. The DOE

²The individual explained that his wife was unable to testify because she was ill with a lung condition and had been admitted to a local emergency room twice in the past month. Tr. at 90. The DOE psychiatrist agreed that the illness was so serious that the individual's wife should not be subjected to the stress of testifying in this proceeding. *Id.* at 93.

psychiatrist argues that there is no possibility of rehabilitation or reformation from bipolar disorder because the episodes associated with the disease recur throughout a lifetime. The forensic psychiatrist contends that the individual has a good prognosis, an adequate treatment program and minimal risk for recurrence of the manic episodes.

After evaluating the evidence in this case, I find that the individual has mitigated the security concern of Criterion H. 10 C.F.R. § 710.8 (h). It is undisputed that the individual disclosed his mental condition to security in 1979 when he was first granted a clearance, and then held a clearance for 17 years (from 1979 to 1996 when he moved to a new job). During that time he was routinely re-investigated and any security concern arising from his mental condition was repeatedly mitigated. DOE consultant psychiatrists concluded that his condition was under control even after an episode in 1981 that required hospitalization. During those 17 years he displayed stellar job performance and did not attempt to hide his condition. Contrary to the opinion of the DOE psychiatrist, the record does not support a finding that the individual had a three-day manic episode every 18 months. Ind. Report at 4. Since 1996, he has sought help from and cooperated with his treating psychiatrists, maintained his prescribed medication regimen, and remained in a stable marriage to a woman who is committed to helping him recognize and treat his illness.

According to the forensic psychiatrist, the key issue in this case is whether the individual can control his condition enough to reduce the likelihood of an episode that may cause a significant defect in his judgment and reliability. Ind. Ex 19 at 6. In his written report, the forensic psychiatrist states:

While [the individual] has not achieved a total stability of mood, his stability over the past 25 years of possible onset of his condition has been quite good. He has had no extreme episodes warranting hospitalization or a protracted work leave. He has not ended up spending family savings on buying sprees, gambling or rash purchases. He has not gotten into fights or exhibited behaviors that would signal to observers that he was having a problem. In the home environment, where subtleties of his mood and behavior would be noticed, it is probable that his wife would detect these changes early enough to avoid a major mood swing. [The individual] also continues to make changes in his life to further limit the possibility of disruptive episodes. For example, he has avoided an over-involvement in religious activities other than weekly church attendance. He is reading more books on the manifestations of bipolar illness so as to be better aware of his own behavior. He is highly compliant with treatment. He is under the care of a local psychiatrist and has very good support at home. . . . Although there is always the extremely low possibility that [the individual] could again become psychotic, with his present treatment and support system, it is highly unlikely.

Ind. Ex. 19 at 6-7.

Hearing Officers have granted or restored an individual's access authorization where the individual suffers from Bipolar I Disorder but presents evidence of a medication regimen and lifestyle that has resulted in a low frequency of psychotic episodes in recent years, a

history of cooperating in treatment of the disorder, a strong support system, and knowledge of the disease. See *Personnel Security Hearing*, Case No. TSO-0363, 28 DOE ¶ 82,943 (2006) (recommendation to restore where individual with Bipolar I Disorder follows prescribed treatment, has strong support system and last episode was two and one half years prior to hearing); *Personnel Security Hearing*, Case No. TSO-0303, 28 DOE ¶ 82,900 (2006) (recommendation to restore where individual follows proper medication regimen, displays good self-assessment, has strong support system and last episode was two years prior to hearing). The individual's work record strongly supports the individual's assertions that he can adequately control severe manifestations of his condition. He has not been hospitalized in over 25 years, and his last serious episode was three years prior to the hearing. Over the years, working with his psychiatrists, he has found the optimum level of lithium to control his condition. His wife of 26 years knows when he has an episode, and promptly advises him to alter his medication in response to the change in his behavior. He is in a stable marriage, and the record of this case contains evidence of a consistently positive work performance for the 15 years that his condition has been diagnosed. Ind. Ex. 6-10. Finally, a qualified medical expert has opined that the individual has a good prognosis. Ind. Ex. 19. The expert was impressed with the fact that the individual had not had an episode requiring hospitalization in 25 years, that there is nothing in the file to suggest that he has exhibited poor judgment or reliability during that time period, and concluded that the individual's present treatment and support system have made a future psychotic episode highly unlikely. *Id.* at 6-7.

Thus, in view of Criterion H and the record before me, I find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: March 14, 2007